

Appendix H: Appointment of Attorneys in *Pro Se* Civil Actions

The following procedures shall govern the appointment of attorneys to represent *pro se* parties in civil actions who lack sufficient resources to retain counsel.

The following procedures shall not govern the appointment of attorneys to represent *pro se* petitioners seeking a writ of habeas corpus on the ground they are in custody in violation of the Constitution or laws or treaties of the United States pursuant to 28 U.S.C. § 2254, or to *pro se* petitioners moving to vacate, set aside or correct their sentences pursuant to 28 U.S.C. § 2255. The appointment of attorneys in such cases shall be governed instead by 18 U.S.C. § 3006A, and counsel furnishing representation in such cases shall be selected from a panel of attorneys designated by the Court pursuant to 18 U.S.C. § 3006A(b) and its Criminal Justice Act Plan.

1. Civil *Pro Bono* Panel. There shall be a panel of attorneys who are willing to accept appointment to represent *pro se* parties in civil actions when such parties lack the resources to retain counsel. Appointment shall be made by the Office of the Clerk in accordance with the written procedures there on file, except that in special circumstances the Judge may appoint counsel directly.

2. Committee on Civil *Pro Bono* Litigation. The Chief Judge shall annually appoint a committee on civil *pro bono* litigation to oversee the operation of the *Pro Bono* Panel. This Committee shall include at least one United States District Judge, one United States Magistrate Judge, and representatives of the District of New Jersey bar who practice primarily in federal courts. The Committee shall oversee the Civil *Pro Bono* Panel established herein, recruit new members to the Panel and expert witnesses willing to accept reduced fees, provide training opportunities for Panel members, and annually report to the Chief Judge on the operation and utilization of the panel, recruitment, and recommended changes for improving the operation of the Panel.

3. Composition of the Civil *Pro Bono* Panel. The Civil *Pro Bono* Panel will consist of the following:

a. Attorney Instructors in Law School Clinical Programs. An attorney working with a clinical program from a law school accredited by the American Bar Association and located in the District of New Jersey may apply to participate by completing the appropriate forms available from the Clerk. In the application the attorney shall set forth, among other things:

1. that the attorney is in good standing in the District of New Jersey;
2. the number of cases per calendar year the attorney is willing to accept for the clinical program;
3. the preference for appointment among the types of actions (e.g., social security appeals, inmate civil rights, other civil rights, and miscellaneous);
4. the number of students involved in the clinical program;
5. the ability of the attorney and the clinical program to represent non-English-speaking clients;
6. the name of the supervisor of the clinical program.

b. Law Firms. Law firms, including public interest law firms, may apply to participate in the panel as firms by completing an application which sets forth, among other things:

1. the number of appointed cases per calendar year in which the firm is willing to accept appointment;
2. the names of the participating attorneys;
3. the ability of participating attorneys to represent non-English-speaking clients;
4. the firm's preference for appointment among various types of actions;
5. the name of the firm's attorney who will serve as the panel liaison.

Any matter assigned to a firm shall be directed to that firm's panel liaison, who, in turn, shall assign the matter to an attorney with that firm. Appearance in the action may be entered by either the firm or the assigned attorney, at the firm's option. The liaison, however, shall inform the Clerk, in writing, of the name of the attorney actually handling the matter.

c. Individual Attorneys. Attorneys who are willing to accept appointment to represent *pro se* parties shall submit an application setting forth, among other things:

1. the number of appointed cases per calendar year the attorney is willing to accept;
2. a description of the attorney's prior civil trial experience, including number of trials and areas of experience;
3. whether the attorney is able to represent non-English-speaking clients;
4. the attorney's preference for appointment among various types of actions.

d. Review of Applications. The Committee on Civil *Pro Bono* Litigation shall review all applications received and shall appoint attorneys to the panel when appropriate. The Committee may remove an attorney or firm from the panel at any time.

e. Amendment or Withdrawal. Information on an application may be amended at any time by letter. An attorney or firm may by letter withdraw from the panel at any time, subject to paragraphs 5 (Relief from Appointment) and 6 (Responsibilities of the Appointed Attorney).

4. Appointment Procedure

a. The Office of the Clerk shall advise and assist any party appearing *pro se* in filing an *in forma pauperis* affidavit. The Clerk shall notify every party who has been granted *in forma pauperis* status pursuant to 28 U.S.C. § 1915 and is appearing *pro se* of the opportunity to apply in writing to the assigned judge for the appointment of counsel. The Clerk shall enclose with such notice a copy of this Rule and a form application for appointment of counsel. If the party is an inmate and the case falls within a category for which this Court has provided that standard discovery shall occur, the Office of the Clerk shall provide the relevant forms to the party, who will be responsible for serving them, but no request for standard discovery shall issue in cases deemed frivolous under 28 U.S.C. § 1915A.

b. The Clerk shall identify each case in one of the following categories: social security appeals, employment discrimination actions, inmates' civil rights, other civil rights, and miscellaneous.

c. Upon the filing of an Application for Appointment of Counsel, the Judge or Magistrate Judge (hereinafter the term "Judge" also includes Magistrate Judges) to whom the action is assigned shall determine whether and when a panel attorney should be appointed to represent the *pro se* party. The Judge may also make this determination at any time *sua sponte*. In making this determination the Judge shall consider all relevant materials, including the standard discovery, if any, obtained by the litigant.

d. Whenever the assigned Judge concludes that appointment of counsel is warranted, the Judge shall refer the case to the Clerk for appointment of an attorney from the Civil *Pro Bono* Panel. In special circumstances, the Judge may appoint counsel directly, in which case the Judge shall notify the Clerk of that appointment. Assignment of cases to attorneys on the Civil *Pro Bono* Panel shall not be made without prior agreement by the attorney. Assignments to attorneys representing law school clinical programs will be made at appropriate times during the school's academic year.

e. The Clerk will select a law intern or attorney from the appropriate list unless the Judge orders appointment of a specific attorney. Assignments to law firms and attorneys will be made randomly throughout the year.

f. Before referring a case to a law firm or an attorney, the Clerk shall determine whether the litigant has any other case pending before the Court and whether an attorney has been appointed in such case. Where an appointed attorney is already representing the litigant in a prior action, such attorney is encouraged but not required to represent the litigant in the new action.

g. Once an attorney has agreed to accept an appointment, the Clerk shall immediately send written notice of the appointment to the selected law firm or attorney. Copies of the pleadings filed to date, any responses by the Department of

Corrections to standard discovery served by a *pro se* inmate, and relevant correspondence and other documents shall accompany such notice. Upon receipt of such notice, the appointed attorney shall promptly review the matter and enter an appearance in the action.

h. The Clerk shall also send immediate written notice of the appointment, including the name, address, and telephone number of the appointed attorney, to the party for whom the appointment is made and to all other parties in the action.

5. Relief From Appointment

a. An appointed attorney may apply to be relieved from appointment, on the following grounds:

- (i) A conflict of interest precludes the attorney from representing the party;
- (ii) the attorney believes that he or she is not competent to represent the party in the particular type of action assigned;
- (iii) a personal incompatibility exists between the attorney and the party, or a substantial disagreement exists between the attorney and the party concerning litigation strategy; or
- (iv) the attorney believes that the party is proceeding for the purposes of harassment or malicious injury, or that the party's claims or defenses are clearly unsupported by fact, are unwarranted under existing law, or cannot be supported by good faith argument to extend, modify, or reverse existing law.

b. If, at any time, the appointed attorney discovers that the party is or has become able to pay for legal services, the attorney shall bring this information to the attention of the assigned Judge. The Judge may thereupon relieve the attorney from the appointment and permit the party to retain another attorney, to proceed *pro se* or to continue with the appointed attorney, but on a paying basis.

c. Any attorney who seeks to be relieved from an appointment under 5a(i) or (ii) shall first make that request in writing to the client, setting forth the reasons therefor. If the client consents to the attorney's request to be relieved, the attorney, upon presenting such facts to the assigned Judge, shall be relieved.

d. If a client objects to an attorney's request to be relieved under 5a(i) or (ii), the attorney shall promptly submit his or her request in writing to the assigned Judge, along with a statement of the reasons for the request. The assigned Judge shall then decide whether to grant the request. Any request under this section, and the decision thereon, shall remain confidential and may not be made available to the other parties to the litigation.

e. If an application for relief from appointment is consented to or granted, the Judge may appoint or direct the Clerk to appoint another attorney from the panel to represent the party.

6. Responsibilities of the Appointed Attorney

a. Upon receiving an appointment, the attorney shall promptly communicate with the newly represented party concerning the action.

b. If, after reviewing the file and initial conference with the *pro se* litigant, the attorney concludes that he or she [cannot accept] must withdraw from the appointment because of the grounds enumerated in Section 5a(iii) or (iv), the attorney shall file a Notice of Withdrawal with the Court, with proof of service upon the client, stating without identification of reasons that "grounds for relief from appointment under 5(a)(iii) or (iv) exist" and return the case to the Clerk.

c. The appointed attorney should discuss the merits of the dispute with the party and explore with the party the possibilities of resolving the dispute by other means, including but not limited to administrative remedies.

d. If, after consultation with the appointed attorney, the party decides to prosecute or defend the action, the appointed attorney shall proceed to represent the party in the action, unless or until the attorney-client relationship is terminated as provided herein.

7. Discharge. A party for whom an attorney has been appointed shall be permitted to relieve the attorney from the representation. The party may ask the Judge to discharge the attorney. Upon a showing by affidavit of satisfactory reasons, the Judge may appoint a new attorney.

8. Expenses. The appointed attorney or the firm with which he or she is affiliated may advance the expenses of the litigation. Appointed *pro bono* attorneys or firms may apply to the Judge during the litigation or within a reasonable period thereafter for reimbursement of costs reasonably incurred in connection with the litigation, not including attorneys' fees, to be paid from the *Pro Bono* Fund ("Fund") and the Attorneys' Admission Fee Account ("Account"). Reimbursement shall be granted to the extent that funds are available for this purpose in the Fund and Account for all expenses reasonably incurred and not reimbursed by the opposing party pursuant to an Order of the Court. It shall be irrelevant to the application for reimbursement whether the attorney's client prevailed.

a. The Court should generally approve motions by the appointed attorney or stipulations designed to reduce discovery expenses, such as taking depositions by other than use of a stenographic transcript, for example by tape recorder or telephone. *See* Fed. R. Civ. P. 30(b)(7).

b. To the extent practicable and where the client is a prisoner, pretrial proceedings in which the prisoner's participation is permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which he or she is confined. *See* 42 U.S.C. § 1997e(f)(1).

c. On request to the Clerk, the appointed attorney may use the Court's video conferencing facilities to communicate with a client who is a prisoner in a facility that has confidential video conferencing capabilities.

d. Appointed attorneys are encouraged to seek free or reduced costs for depositions from the National Court Reporters Association, and free or reduced cost expert reports and/or witnesses from a list which shall be maintained by the Committee on Civil *Pro Bono* Litigation and shall be available from the Clerk.

9. Compensation for Services

a. If the action is one for which compensation for legal services may become available to the appointed attorney by statute and be deductible from any recovery, the Clerk shall furnish information regarding such facts to the *pro se* party at the time the appointment is made. The Clerk shall also inform the party that any statutory fee award may be made only by the Judge upon application of counsel.

b. *Pro se* litigants in social security disability cases shall be specifically advised by the Clerk that a statutory attorney's fee may be awarded to be paid from the award, if any, of retroactive disability benefits.

c. Upon appropriate application by the appointed attorney, the Judge may award attorney's fees to the appointed attorney or legal clinic for services rendered in the action, as authorized by applicable statute, regulation, rule, or other provision of law, and as the Judge deems just and proper.

10. Duration of Representation

a. An appointed attorney shall represent the party in the action in the trial court from the date he or she enters an appearance until he or she has been relieved from appointment by the Court or until a final judgment is entered in the action and reasonable efforts are made to enforce the judgment. The attorney shall, if it is appropriate in his or her judgment or requested by the litigant, file a notice of appeal from a final judgment as well as any post-trial motions.

b. If the party wishes to take an appeal from a final judgment or appealable interlocutory order, or if such judgment or order is appealed by another party, or if the matter is remanded to an administrative forum, the appointed attorney is encouraged but not required to represent the party on the appeal and in any proceeding, judicial or administrative, that may ensue upon an order of remand. If the attorney declines to perform such additional services, the client and the Court shall be notified in writing.

11. Training

The Committee on Civil *Pro Bono* Litigation shall, in cooperation with the New Jersey Bar, organize and conduct educational programs and prepare educational materials to train and advise attorneys on the Civil *Pro Bono* Panel in the preparation and trial of the most common types of civil actions involving *pro se* parties brought before the Court.

12. Annual Review

At the end of each fiscal year, the Clerk of the Court shall report to the Chief Judge, the Board of Judges, and the members of the Committee on Civil *Pro Bono* Litigation the following statistics broken down by type and judicial assignment:

- a. the number of civil cases filed *in forma pauperis*, excluding petitions filed pursuant to 28 U.S.C. §§ 2241, 2254, and 2255;
- b. the number of applications for appointed counsel filed;
- c. the number of orders of appointment entered;
- d. the number of applications for withdrawal filed;
- e. the number of applications for withdrawal granted;
- f. the number of applications for withdrawal denied; and
- g. the number of appointments made subsequent to withdrawal of counsel.